IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1325 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KINIT JAYANTILAL AMIN

Versus

PATEL KANAJIBHAI PURSHOTTAM BHAI

Appearance:

MR KB ANANDJIWALA for Petitioner

MR KP RAVAL, APP for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/03/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Code of Criminal Procedure at the instance of the original accused, in respect of a complaint filed by the first respondent herein, alleging that the petitioner had committed an offence under section 138 of the Negotiable

Instruments Act.

2. So far as the facts of the case are concerned, there cannot be any controversy inasmuch as the same are apparent on the face of the complaint.

3. Learned counsel for the applicant-accused puts forward two propositions for quashing the complaint which to some extent are interconnected.

4. The first contention is that the complaint in question does not disclose any cause of action inasmuch as on the facts admitted within the complaint itself, the cause of action for filing the complaint could at best be said to have arisen when the complainant first issued a notice of dishonour to the accused in respect of the first presentations of the two cheques in question which had resulted in dishonour. The complaint is admittedly not filed on account of that notice. It is admitted in the complaint that after the first dishonour, the cheques were again presented to the bank, again met with dishonour, and that the complainant therefore issued a fresh notice under section 138 of the said Act, and it is this second notice on the basis of which the present complaint is filed.

5. The second contention raised by the learned counsel for the petitioner is that since in view of the well settled position in law that there can be only one cause of action in respect of offence under section 138 of the said Act and that is the issuance of first notice in respect of the dishonour, the complaint has to be filed within one month of the expiry of 15 days period contemplated by clause (c) of the proviso to section 138. In the instant case the complaint is admittedly time-barred.

6. The facts as set out in the complaint are to the effect that the accused had given the complainant two cheques dated 10th November 1993 and 20th November 1993, and on presentation for clearing through the bank of the drawee, the same were returned to the drawee on 11th November 1993 and 21st November 1993 respectively. The accused, therefore, issued a notice under section 138 of the Negotiable Instruments Act dated 30th November 1993.

7. However, the accused, instead of taking action under the aforesaid notice, once again presented the two cheques for clearing through his own bank on 27th December 1993, and since the same were dishonoured, issued a second notice under section 138 of the said Act

on 29th December 1993.

8. The present complaint has been filed on 21st January 1993, arising from the second notice under section 138 of the said Act, and not from the first notice.

9. The law in this regard is well established by the decision of the Supreme Court in the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar, reported at JT 1998(6) SC 48. The Supreme Court clearly laid down in the said decision in paragraphs 7, 8 and 10 thereof to the effect that if they were to proceed on the basis of the generic meaning of the term "cause of action" certainly each of the facts contemplated by the various clauses in the proviso to section 138 would constitute a part of the cause of action, but then it is significant to note that clause (b) of section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (c) of the proviso to section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under section 142 is to be reckoned accordingly. The combined reading of the above two sections of the act leaves no room for doubt that cause of action within the meaning of section 138 arises - and can arise - only once.

10. The aforesaid view of the Supreme Court has been followed by this court in its decision in the case of Pruthvish B. Dave. Vs. State of Gujarat, reported at 2000 Criminal Law Journal 122.

11. Thus, on the facts of the case I find that the cause of action in the instant case accrued to the complainant when he issued the first notice under section 138 of the said Act dated 30th November 1993. From the complaint it is not clear as to when the said notice was received by the accused, and that therefore the period of 15 days would commence from which date and end on which date. In any case, assuming that the same was served on the accused within a few days of issuance of the said notice, learned counsel for the complainant is unable to show how the complaint filed on 21st January 1994 (on the basis of the second notice of 29th December 1993) would

be within 30 days of the expiry of the period of 15 days available to the accused under section 138(c).

12. In the premises aforesaid the complaint is obviously incompetent and deserves to be quashed and set aside. It is accordingly quashed and set aside. Rule is made absolute.

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